IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1116 of 2000

with

CRIMINAL APPEAL No 334 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ASHOK @ GADIYO BHUPATBHAI BHIL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1116 of 2000

MR BS SUPEHIA for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

2. Criminal Appeal No. 334 of 2001

MR BS SUPEHIA for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/09/2002

ORAL JUDGEMENT

1. The appellants were the accused persons in Sessions Case No.5 of of 2000 before the City Sessions Court, at Ahmedabad. They came to be convicted by judgment and order dated the 19th October, 2000, rendered by learned Additional Sessions Judge, Court No.2, Ahmedabad, for the offences punishable under Section 394 read with Section 34 of Indian Penal Code and were ordered to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/- and, in default, to undergo rigorous imprisonment for three months.

2. The facts leading to the present appeals can be briefly stated thus:-

2.1 One Manojbhai Narandas Soni, a medical doctor by profession, was on his way to Himatnagar from Mumbai on the 31st May, 1998 to attend a marriage. He boarded Karnavati Express from Borivali and got down at Ahmedabad, at about 9.15 P.M. His friend one Jayesh Patel was supposed to join him and he was asked by his friend to wait at the platform. Dr. Soni was waiting for his friend at the southern end of platform No.4 after alighting from the coach. At that time, three persons surrounded him. One of them showed him a knife and they robbed him of his golden ring and cash worth Rs.18,000/-, which were on his person. During the course of this transaction, he sustained injury on his left thigh. After robbing Dr. Soni, the assailants fled away. The victim raised shouts. Police came and he informed the police about the incident. On basis of his information, an offence was registered and investigation started. The Investigating Agency caught Ashok alias Gandio from Musafarkhana on the next day and recovered some amount of cash, i.e. Rs.4950/- from him. The other two accused persons also came to be arrested during the course of investigation. The ring was recovered from the wife of accused-Sanjay alias Bombaio. On basis of the material collected, the Investigating Agency found that there was sufficient evidence against the three accused and, therefore, a charge sheet came to be filed against them. The case was committed to the Court of Sessions as the offences were triable exclusively by a Court of Sessions.

2.2 At the trial, charge was framed against the accused persons at Ex.7. All of them pleaded not guilty to the charge and claimed to be tried.

2.3 The prosecution examined, in all, six witnesses

and produced material evidence on record in the form of F.I.R., test identification parade Panchnama and other materials. The learned Additional Sessions Judge, after considering the evidence on record, came to a conclusion that the prosecution was successful in establishing the charges against the accused persons and convicted them as stated above.

3. Learned Advocate Mr. Supehia appearing for the appellants in both these appeals has taken this Court through the evidence. He has read the deposition of the first informant, victim-Manojbhai Narandas Soni (Ex.29) and his First Information Report (Ex.30) and submitted that there are discrepancies between the two. He submitted that the description of the assailants which appears in the deposition is absent in the F.I.R. The complainant, therefore, has improved his version. The description given in the F.I.R. is vague and scanty and, therefore, the accused could not have been convicted on basis of such evidence.

3.1 Mr. Supehia submitted that, barring deposition of the first informant, there is hardly any evidence to connect the accused persons with the offence. He submitted that the test identification parade has not been properly conducted. The Panch witnesses to the test identification parade have not been examined and that would weaken the case of the prosecution further.

3.2 Mr. Supehia submitted that the victim speaks of having been robbed of the currency notes and the golden ring, which is allegedly recovered from the wife of Sanjay. That ring has not been identified by the first informant at any point of time except in the Court. Mr. Supehia submitted that there is discrepancy also in the currency notes recovered from the accused.

3.3 Lastly, Mr. Supehia submitted that there is discrepancy about the evidence on aspect of injury on person of the victim. The Police Officer says that the injury was on chest, whereas the victim himself as well as the medical evidence indicates that it was on left thigh. Mr. Supehia, therefore, urged that the Court below has ignored all these discrepancies and has recorded conviction which is not proper and this Court, therefore, may accept this appeal and set aside the judgment and order recording conviction and acquit the appellants of the charges.

4. Learned Additional Public Prosecutor Mr. Abichandani has opposed this appeal. According to Mr.

Abichandani, there is a tendency in the witnesses to add some embroidery to their version. They tend to exaggerate out of fear of being disbelieved. Therefore, some addition by itself may not be taken as sufficient to disbelieve the witness. In support of his submission, he has relied on decision of the Supreme Court in the case of State of U.P. v. Anil Singh, 1988 SC 1998.

4.1 Mr. Abichandani submitted further that the complainant has given basic description of the assailants and it is nobody's case that the description does not tally with physical appearance of the assailants. The detailed description given by the complainant in deposition may not have been given by him in the F.I.R., which was recorded immediately after the incident as he may have been disturbed. The deposition is recorded after some time and, by that time, the complainant may have recollected himself and, therefore, that by itself will not render the deposition of the victim as unbelievable when there is unexplained recovery of muddamal article from the accused persons. Mr. Abichandani submitted further that, about discrepancy in the site of injury, the complainant is the best person to say as to on what part of the body he sustained injury because he was the only person present at the time of the incident. His version is supported by the evidence of the Medical Officer and, therefore, a slip in deposition of a Police Officer may not be viewed seriously and that by itself will not render the prosecution case doubtful, so as to acquit the accused persons.

4.2 Mr. Abichandani submitted that there is evidence of the Executive Magistrate in whose presence test identification parade was conducted. He has clearly deposed about how it was conducted and it is clear that the three assailants were identified by the complainant. Referring to the deposition of the complainant, particularly, the cross-examination, Mr. Abichandani submitted that there was sufficient light at the time of the incident and the complainant, therefore, had ample opportunity of identifying these persons. All these factors have been considered by the Court below and conviction is recorded. He urged that the appeals may be dismissed.

5. Having regard to rival side contentions, deposition of Dr. Manojbhai Soni (Ex.29) clearly indicates that three assailants robbed him of Rs.18,000/and a gold ring. He gives description both in his F.I.R. and in his deposition that one of the men was tall and slim. He identifies them in the Court and he

states that he had also identified these persons before the Executive Magistrate. The witness has been cross-examined and it is found that there is no cross-examination on aspect of description and identification of the assailants.

6. Executive Magistrate-Sureshchandra Vasudev Dixit is examined at Ex.13. He gives full details about how the test identification parade was conducted and states that all the three assailants were identified by the complainant at the time of the test identification parade. It is clear from the deposition of this witness that the test identification parade was properly conducted and there was no scope of any prior identification of the assailants by the complainant. There is no reason to disbelieve this test identification parade. The Executive Magistrate is an independent witness and no bias can be attributed to him and in absence of any concrete and sustainable reasons, there is no reason to disbelieve his deposition.

7. There is deposition of Jitendrasinh Joravarsinh at Ex.12, who speaks of arrest of Ashok Gandio and recovery of money from him. There is deposition of P.S.I.-Champavat as well as P.S.I.-Lalabhai Akhambhai. P.S.I.-Champavat says that he along with other Police Officers had immediately approached the complainant on the complainant having raised shouts. The complaint was recorded by Lalabhai Akhambhai.

8. Thus, if the prosecution evidence is considered as a whole, there is complaint of the complainant lodged immediately after the incident which contains description of the assailants, on the very next day, one of the assailants is arrested by police with some muddamal, the assailants have been identified by the victim before the Executive Magistrate as well as in the Court and, above all, there is recovery of muddamal article. There is evidence to indicate that the victim had sustained injury on his left thigh and, in the opinion of this Court, minor discrepancy about the site of injury between the deposition of one of the Police Officers and the complainant is of no virtue to the appellants. Likewise, the improved exact description of the assailants emerging from deposition of the complainant by itself does not affect the deposition of the complainant as he has already given basic description of the assailants in his complaint, which was recorded soon after the incident and it is nobody's case that the said description does not tally with the description of the assailants, namely, the appellants.

9. For the foregoing reasons, this Court finds no substance in the appeals. The trial Court has considered and interpreted the evidence in its proper perspective. There is no reason to interfere with the same. The appeals must fail and are, therefore, dismissed. The judgment and order of conviction and sentence rendered by the learned Additional City Sessions Judge, Court No.2, Ahmedabad, in Sessions Case No.5 of 2000 is hereby confirmed.

[A.L. DAVE, J.]

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